HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.651 of 2007

Between:

APSRTC rep. by its Managing Director,
Mushirabad, Hyderabad and others

… Appellants

And

Mohd. Shakeel

… Respondent

Counsel for the appellants: Shri V. Padmanabha Rao for
Smt. B.G. Uma Devi

Counsel for respondent: Shri A.K. Jayaprakash Rao

::JUDGMENT::

14th September, 2007

Per G.S. Singhvi, CJ

This appeal is directed against order dated 11-9-2001 passed by the learned Single Judge, whereby he allowed the writ petition filed by the respondent and directed the appellants herein to fix his pay by taking into consideration the notional increments for the period

during which he was kept out of employment in furtherance of the order of removal passed by the Depot Manager.

Before adverting to the facts of the case and dealing with the issue arising in the appeal, we deem it proper to mention that the appeal was dismissed by the Division Bench on 25-8-2003, but the matter has been listed for re-hearing in view of order dated 13-2-2007 passed by the Supreme Court in Civil Appeal No.905 of 2007 – APSRTC and another v. M. Bhoopathi Rao.

Respondent – Mohd. Shakeel joined service in Zaheerabad Depot of the Andhra Pradesh State Road Transport Corporation (for short, 'the Corporation') as Driver in 1989. His services were regularised with effect from 1-7-1991. In the meanwhile, an enquiry was initiated against him on the charge of rash and negligent driving and causing death of a 12 year old boy on Hyderabad – Bidar route. The enquiry officer found him guilty of the charge. The disciplinary authority i.e. the Depot Manager accepted the enquiry report and passed order dated 6-4-1992, whereby the respondent was removed from service. He challenged that order in I.D.No.11 of 1995. By an award dated 6-2-1997, Presiding Officer, Labour Court-II, Hyderabad declared the removal of the respondent illegal and ordered his reinstatement with all benefits such as continuity of service etc., but without back wages. For the sake of convenience, the relevant extracts of the award are reproduced below:

> "Therefore, the point that arises for consideration is whether the petitioner is entitled to get the impugned removal orders set aside and to get reinstatement as sought for? If not to what relief he is entitled?
>
> During the course of arguments certain documents were got marked in the case as Ex.M1 to M.203 by consent on behalf of the

respondent while none were marked on behalf of the petitioner. As regards the validity of the D.E. is concerned, a memo under Sec.11-E is filed. As such, this court uphold the D.E. as valid by its order dated 19-7-1996 leaving open the question of proportionality of punishment awarded to the petitioner to be considered on merits in Ex.M18 the findings of the Enquiry Officer and Ex.M20 the proceedings of the Depot Manager reveal that Enquiry Officer has considered the statement of the witness and documents including the explanation of the petitioner rejecting the plea of explanation of the petitioner. A careful scrutiny of the material made available on record amply makes it clear that the explanation of the petitioner was rejected rendering the findings of the Enquiry Officer as sustainable. However, by taking into consideration the totality of facts and circumstances, this court is satisfied that the punishment of removal is too excessive, disproportionate and it is liable to be set aside in view of the ruling in AIR 1972 SC page 221 and also in 1977 ALT 23 NRC holding that when a pedestrian suddenly crosses the road and meets with accident the accused/driver is not liable for the offence of rash and negligent driving. Thus, the point is accordingly found in favour of the petitioner.

In the result, the ID petition is allowed setting aside the impugned removal order besides directing the respondent to reinstate the petitioner into service with all benefits such as continuity of service etc., but without any back wages under the given fact of circumstances. The award is passed accordingly."

After reinstatement, the respondent made representation for re-fixation of pay by grant of notional increments for the period of forced unemployment and then filed Writ Petition No.24961 of 2000. He relied on the judgments of this Court in **N. Raja Reddy v. Vice-Chairman and Managing Director, APSRTC, Hyderabad**[1] and **T. Narayana v. Managing Director, APSRTC, Hyderabad**[2] and pleaded that as a sequel to his reinstatement with continuity of

service and other benefits minus back wages, he has become entitled to the benefit of notional increments and the non-petitioners are bound to re-fix his pay by counting the notional increments. The appellants herein contested the writ petition and pleaded that the writ petitioner (the respondent herein) is not entitled to the benefit of notional increments for the period he remained out of employment.

The learned Single Judge relied on the judgment of the Division Bench in **APSRTC, Khammam Region, Khammam v. P. Nageswara Rao**[3] and held that the petitioner is entitled to the benefit of notional increments. Accordingly, he allowed the writ petition and directed the appellants to fix the petitioner's pay by taking into consideration the notional increments.

Sri V. Padmanabha Rao relied on the judgments of the Supreme Court in **APSRTC, Hyderabad v. S. Narsagoud**[4] and **APSRTC and others v. Abdul Kareem**[5] and argued that in view of the law laid down in those cases, the award of reinstatement without explicit direction for grant of other consequential benefits did not entitle the respondent to claim notional increments and the learned Single Judge committed a serious error by issuing the impugned direction.

Sri A. K. Jayaprakash Rao, learned counsel for the respondent heavily relied on the judgment of the Division Bench in **APSRTC, Khammam Region, Khammam v. P. Nageswara Rao** (supra) and argued that the direction given by the learned Single Judge for fixation of his client's pay by taking into consideration the notional increments for the period during which he was wrongfully kept out of job does not suffer from any legal infirmity. Learned counsel made

pointed reference to the award of the Labour Court and argued that in view of the unequivocal direction given for reinstatement of the respondent with all benefits such as continuity of service etc. except back wages, the appellants cannot deny him the benefit of notional increments.

We have considered the respective submissions. In **N. Raja Reddy**'s case (supra), a learned Single Judge of this Court construed the word 'reinstatement' and held:

> "I find that the Corporation has not properly construed the moaning given to the word 'reinstatement' while treating the period as continuous for the purpose of seniority and terminal benefits, there is no reason why the same period should not be treated for the purpose of pay fixation notionally. But for the words 'reinstatement without backwages', the petitioner could have got all the benefits of fixation arrears of wages and other benefits. Therefore, the impugned proceedings are arbitrary and illegal."

The learned Single Judge then referred to Circular dated 18-12-1991 issued by the Corporation for determination of the monetary benefits admissible to the workman who is reinstated pursuant to an award of the Labour Court and held that once an order of reinstatement is granted, the workman becomes entitled to all consequential benefits unless the same are expressly denied.

In **Managing Director, APSRTC, Kurnool Depot v. M. Sankaraiah**[6], the Division Bench headed by P.V. Reddi, J. (the then Acting Chief Justice) held as under:

> "We cannot accept the contention of the learned counsel for the appellant that backwages having been denied to the respondent, the benefit of notional increments cannot also be given. It is not as if the learned single Judge directed any arrears for the past period to be paid. It is only a question of fixation of the

salary at the appropriate scale after reinstatement and unless the Labour Court's order is clear, benefit of continuity of service cannot be restricted only to the computation of seniority or for pensionary benefits. The view taken by the learned single Judge is supported by the Division Bench decisions of this Court in Writ Appeal Nos.1060 of 1998, 1321 of 1997, 395 of 1996 and Writ petition No.11585 of 1988 and against the judgment in Writ Appeal No. 395 of 1996, SLP No. 20096 of 1996 preferred by the Corporation was dismissed. Hence, we are not inclined to admit the writ appeal. The writ appeal is dismissed at admission stage."

In **Depot Manager, APSRTC, Kurnool Depot v. S.S. Reddy Jamal Reddy**[7], another Division Bench of this Court held as under:

"……..Thus the direction for reinstatement of the workman must be read in the aforementioned context that except the backwages and attendant benefits, he was entitled to all other benefits to which he became entitled to by way of his reinstatement without break in service. Having regard to the fact that all the attendant benefits have been clubbed with backwages, we have no doubt in our mind that the learned single Judge while disposing of the writ application meant that not only the notional increments shall not be paid but other allowances to which the concerned workman is entitled to, had he worked during the said period, could not be allowed. But the same does not and cannot mean that the workman would not be entitled to the benefit of notional increments for the purpose of computation of his retiral and other terminal benefits, as also payment of his salary from the date of his reinstatement. If any other meaning is attributed, the same, in our opinion, would amount to double punishment, meaning thereby not only he becomes disentitled from receiving backwages and attendant benefits but also reduction in his salary, which is not contemplated under the statute."

The propositions laid down in the above noted judgments were reiterated and approved in **P. Nageswara Rao**'s case (supra).

In **S. Narsagoud**'s case (supra), the Supreme Court interpreted the award of reinstatement with continuity of service but without back wages in the backdrop of the fact that the workman had been removed from service on the charge of absence from duty. Their Lordships referred to Regulation 13 of the Andhra Pradesh State Road Transport Corporation Employees (Pay and Allowances) Regulations, 1964 and Circular No.19/9, dated 8-9-1992 issued by the Corporation and held:

> "9.……..There is a difference between an order of reinstatement accompanied by a simple direction for continuity of service and a direction where reinstatement is accompanied by a specific direction that the employee shall be entitled to all the consequential benefits, which necessarily flow from reinstatement or accompanied by a specific direction that the employee shall be entitled to the benefit of the increments earned during the period of absence. In our opinion, the employee after having been held guilty of unauthorised absence from duty cannot claim the benefit of increments notionally earned during the period of unauthorised absence in the absence of a specific direction in that regard and merely because he has been directed to be reinstated with the benefit of continuity in service.
>
> 10. The Regulations referred to hereinabove clearly spell out that the period spent on the extraordinary leave or leave without pay or a period of overstayal after the expiry of leave or joining time cannot count towards increments unless the order of the competent authority sanctioning the extraordinary leave or leave without pay or the order commuting the period of overstayal into extraordinary leave or leave without pay is accompanied by a specific order to count the period for increments. A period of unauthorised absence from duty treated as a misconduct and held liable to be punished by way of penalty cannot be placed on a footing better than the period of extraordinary leave or leave without pay or a period of overstayal. Ordinarily, the increments are earned on account of the period actually spent on duty or

during the period spent on leave, the entitlement to which has been earned on account of the period actually spent on duty. The direction of the High Court entitling the respond respondent to earn increments during the period of unauthorised absence from duty though held liable to be punished in departmental inquiry proceedings would amount to putting a premium on the misconduct of the employee."

In **Abdul Kareem**'s case (supra), the Supreme Court referred to the judgment in **S. Narsagoud**'s case and held:

"10. The principle of law on point are no more res Integra. This Court in S. Narsagoud (supra) succinctly crystallized principle of law in Paragraph 9 of the judgment :"we find merit in the submission so made. There is a difference between an order of reinstatement accompanied by a simple direction for continuity of service and a direction where reinstatement is accompanied by a specific direction that the employee shall be entitled to all the consequential benefits, which necessarily flow from reinstatement or accompanied by a specific direction that the employee shall be entitled to the benefit of the increments earned during the period of absence. In our opinion, the employee after having been held guilty of unauthorized absence from duty cannot claim the benefit of increments notionally earned during the period of unauthorized absence in the absence of a specific direction in that regard and merely because he has been directed to be reinstated with the benefit of continuity in service.

11. Reverting to the facts of the case at hand, as already noticed, the Labour Court specifically directed that the reinstatement would be without back wages. There is no specific direction that the employee would be entitled to all the consequential benefits. Therefore, in the absence of specific direction in that regard, merely because an employee has been directed to be reinstated without back wages, he could claim a benefit of increments notionally earned during the period when he was not on duty or during the period when he was out of service. It would be incongruous to suggest that an employee, having been held guilty and remained absent from duty for a long time,

continues to earn increments though there is no payment of wages for the period of absence."

In **J. K. Synthetics Ltd. v. K.P. Agarwal**[8], the Supreme Court highlighted the distinction between an award of reinstatement passed by the Labour Court in exercise of power under Section 11-A of the Industrial Disputes Act, 1947 and an award of reinstatement passed without the aid of Section 11-A, and laid down the following principles:

> "1. The manner in which "back wages" is viewed, has undergone a significant change in the last two decades. They are no longer considered to be an automatic or natural consequence of reinstatement. There has also been a noticeable shift in placing the burden of proof in regard to back wages. There is also a misconception that whenever reinstatement is directed, "continuity of service" and "consequential benefits" should follow, as a matter of course. The disastrous effect of granting several promotions as a "consequential benefit" to a person who has not worked for 10 to 15 years and who does not have the benefit of necessary experience for discharging the higher duties and functions of promotional posts, is seldom visualised while granting consequential benefits automatically. Whenever courts or tribunals direct reinstatement, they should apply their judicial mind to the facts and circumstances to decide whether "continuity of service" and/or "consequential benefits" should also be directed.
>
> 2. Even if the court finds it necessary to award back wages, the question will be whether back wages should be awarded fully or only partially (and if so the percentage). That depends upon the facts and circumstances of each case. Any income received by the employee during the relevant period on account of alternative employment or business is a relevant factor to be taken note of while awarding back wages, in addition to the several factors mentioned in **Rudhan Singh** [(2005) 5 SCC 591] and **Uday Narain Pandey** [(2006) 1 SCC 479]. Therefore, it is necessary for

the employee to plead that he was not gainfully employed from the date of his termination. While an employee cannot be asked to prove the negative, he has to at least assert on oath that he was neither employed nor engaged in any gainful business or venture and that he did not have any income. Then the burden will shift to the employer. But there is, however, no obligation on the terminated employee to search for or secure alternative employment. Be that as it may.

3. Decisions of the Supreme Court relating to back wages payable on illegal retrenchment or termination may have no application to the case like the present one, where the termination (dismissal or removal or compulsory retirement) is by way of punishment for misconduct in a departmental inquiry, and the court confirms the finding regarding misconduct, but only interferes with the punishment being of the view that it is excessive, and awards a lesser punishment, resulting in the reinstatement of employee.

4. Where the power under Article 226 or Section 11-A of the Industrial Disputes Act (or any other similar provision) is exercised by any court to interfere with the punishment on the ground that it is excessive and the employee deserves a lesser punishment, and a consequential direction is issued for reinstatement, the court is not holding that the employer was in the wrong or that the dismissal was illegal and invalid. The court is merely exercising its discretion to award a lesser punishment. Till such power is exercised, the dismissal is valid and in force. When the punishment is reduced by a court as being excessive, there can be either a direction for reinstatement or a direction for a nominal lump sum compensation. And if reinstatement is directed, it can be effective either prospectively from the date of such substitution of punishment (in which event, there is no continuity of service) or retrospectively, from the date on which the penalty of termination was imposed (in which event, there can be a consequential direction relating to continuity of service). What requires to be noted in cases where finding of misconduct is affirmed and only the punishment is interfered with (as contrasted from cases where termination is held to be illegal or void) is that there is no automatic

reinstatement; and if reinstatement is directed, it is not automatically with retrospective effect from the date of termination. Therefore, where reinstatement is a consequence of imposition of a lesser punishment, neither back wages nor continuity of service nor consequential benefits, follow as a natural or necessary consequence of such reinstatement. In cases where the misconduct is held to be proved, and reinstatement is itself a consequential benefit arising from imposition of a lesser punishment, award of back wages for the period when the employee has not worked, may amount to rewarding the delinquent employee and punishing the employer for taking action for the misconduct committed by the employee. That should be avoided. Similarly, in such cases, even where continuity of service is directed, it should only be for purposes of pensionary/retirement benefits, and not for other benefits like increments, promotions, etc.

5. But there are two exceptions. The first is where the court sets aside the termination as a consequence of employee being exonerated or being found not guilty of the misconduct. Second is where the court reaches a conclusion that the inquiry was held in respect of a frivolous issue or petty misconduct, as a camouflage to get rid of the employee or victimise him, and the disproportionately excessive punishment is a result of such scheme or intention. In such cases, the principles relating to back wages, etc. will be the same as those applied in the cases of an illegal termination."

In view of the last mentioned three judgments of the Supreme Court, it must be held that an award of reinstatement without anything more does not entitle the workman to claim monetary benefits including fixation of pay by grant of notional increments. However, if the award contains a direction for grant of other consequential benefits like back wages, continuity of service and other attendant benefits, then the workman can lay claim for consequential benefits including fixation of pay by grant of notional increments.

Adverting to the facts of the case in hand, we find that the respondent was prosecuted for an offence under Section 304-A, IPC. He was acquitted by Judicial Magistrate of First Class, Zaheerabad vide judgment dated 17-11-1994 passed in C.C.No.260 of 1991. The learned Presiding Officer of the Labour Court held that even though the charge of rash and negligent driving has been proved against the workman, the punishment of removal from service was totally disproportionate to the misconduct found proved and ordered his reinstatement with all benefits such as continuity of service etc. except back wages. The use of the expression "with all consequential benefits such as continuity of service, etc., but without back wages" makes it clear that the only relief denied to the respondent was in the form of back wages. In other words, the award of the Labour Court can be interpreted as entitling the respondent not only to reinstatement but all other service benefits except the back wages.

If the order under challenge is viewed in the light of the above discussion, it is not possible to find any legal infirmity in the direction given by the learned Single Judge for fixation of the respondent's pay by grant of notional increments.

The judgments of the Supreme Court on which reliance has been placed by Shri V. Padmanabha Rao do not support the cause of the appellants. In neither of those cases, the Supreme Court considered the award like the one which resulted in reinstatement of the respondent with continuity of service etc. Therefore, the proposition of law laid down by the Supreme Court in those cases cannot be made basis for upsetting the direction given by the learned

Single Judge.

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP.No.1301 of 2007 filed by the appellants for interim relief is also dismissed.

G.S. SINGHVI, CJ

14th September, 2007

C.V. NAGARJUNA REDDY, J

ARS

---

[1] 1998 (2) ALD 317
[2] 1998 (3) ALD 304
[3] 2001 (4) ALD 568
[4] (2003) 2 SCC 212
[5] (2005) 6 SCC 36
[6] 1999 (4) ALT 89
[7] 2001 (2) ALD 92
[8] (2007) 2 SCC 433